(3) the appellant made no claim based on market value but on market value but a claim based on loss of profits which was inadmissible; he also made an arbitrary claim for $50,000 which the Collector was correct in rejecting;
(4) the appellant had a contingent interest in the land which at the date of acquisition was incapable of being valued on any rational or realistic basis;
(5) in any event, the appellant has, in the circumstances of the case, failed to prove that the apportionment of $1 for his interest is inadequate.

For the above reasons, we are of the view that the decision of the Board on both issues is correct. There will be an order accordingly and the appellant will pay the costs of both the respondents in these proceedings.

Order accordingly.

Solicitors: *Braddell Brothers*; *Tan Rajah & Cheah*; *NS Kang*.

Reported by *Ng Sheau Jiuan*

Chan Nai Inn v Lim Choi Chay

HIGH COURT (SINGAPORE) – SUIT NO 415 OF 1984
CHAN SEK KEONG J
1 NOVEMBER 1988

Tort – Negligence – Collision between two motor boats travelling in opposite directions on river – Liability of parties – Both parties' testimony the opposite of each other – No objective evidence as to how or where the collision occurred – Court's findings based on most probable scenario – Equal apportionment of liability

The plaintiff is the mother of the deceased who died as a result of a collision between the deceased's motor boat and the defendant's motor boat whilst travelling in opposite directions on a river. As a result of the accident, the plaintiff instituted a suit for damages for negligence against the defendant. During the trial, material objective evidence concerning the directional course of the river was not before the court and both police reports lodged by L, a passenger on the deceased's motor boat, and the defendant did not state where exactly on the river the collision occurred or how it occurred. In fact, L's testimony was directly the opposite of the defendant's testimony. The other unusual fact was that the deceased's motor boat was damaged on its starboard side.

Held, both parties were equally liable for the collision:

(1) There is no evidence as to the respective positions of the two boats on the river immediately before or how they collided into each other or how one collided into the other.

(2) Taking into account the fact that the collision occurred at about 5 to 6 am when it was still dark and when there would be little traffic on the river and that it was not safe to travel near the banks, the natural inclination would be for the deceased or the defendant to keep to the centre of a narrow channel and it is probable that both boats collided as both were turning at the bend of the river. Accordingly, the principle in *Baker* v *Market Harborough Industrial Co-Operative Society*[1] applied and both must be held to blame equally.

(3) Even if the finding that the two boats were probably travelling in the centre of the river when they collided was wrong, the court's finding on liability would be the same on another ground. This was that the damage to the deceased's boat, being inflicted on its starboard side, meant that both boats were travelling on their wrong sides and as there was no other evidence to the contrary, both must be held to blame. Since the court is unable to determine the degree of blameworthiness of each of them, both are equally to blame.

Cases referred to

1 *Baker* v *Market Harborough Industrial Co-Operative Society* [1953] 1 WLR 1472 (folld)
2 *W & M Wood (Haulage) Ltd* v *Redpath* [1967] 2 QB 520 (refd)
3 *Davidson* v *Leggett* 113 SJ 409 (refd)
4 *Knight* v *Fellick* [1977] RTR 316 (refd)
5 *Howard* v *Bemrose* [1973] RTR 32 (folld)

Karuppan Chettiar and *Srinivasan Selvaraj* for the plaintiff.
Brar Pritam Singh for the defendant.

Cur Adv Vult

Chan Sek Keong J: This is an unusual case in that it involves a collision between two motor boats whilst travelling in opposite directions on a river which has since been reclaimed by the government.

The plaintiff is the mother of one Lim Boon Seng ('the deceased') who died as a result of the collision. On 3 July 1981, Lim was navigating motor boat no SF9469 along Serangoon river and proceeding towards the village of Kangkar. In other words, he was going inland. He had a passenger, one Lek Seng Thiam, who was sitting at one end of the boat facing him. Lim was sitting at the other end of the boat where the engine was. Thus, Lek was not in a position to see anything coming in front of the boat since his back was to the front of the boat. Lim would have been able to see what was coming in front of him but since he died without giving a statement to the police, no one knows what he saw or what he did just before the collision.

The collision occurred when another motor boat, ie SF9537, came from the opposite direction and the two boats collided into each other. SF9537 was then being navigated by Lim Choi Chay, the defendant.

As a result of the collision, Lek was thrown onto the base of the boat but Lim Boon Seng was thrown into the river. He was in the river for a short while and was then pulled up onto SF9537 by the defendant. SF9537 then proceeded to Kangkar where the police was informed of the accident. Lim Boon Seng had a laceration of nine cm on the right front parietal region but appeared to be all right when he reached Kangkar. He was then taken to hospital where he died on 11 July 1981. The cause of

death was certified as 'bronchopneumonia due to drowning'.

Lek later made a report to the police at 2.40 pm on the same day. His report was as follows:

> I, Lek Seng Thiam on 3 July 1981 at about 0600 hrs whilst I steer my m/sampan SF 9469 proceeding in Serangoon River, suddenly collision happen between my m/sampan and other m/sampan SF 9537 which was proceeding out of the river. My boat crew by the name Lim Boon Seng m/27 was fell in the river during the collision, he was save by me and other m/sampan personal, after that I sent him to Tan Tock Seng hospital as his forehead was injury. The collision also caused serious damage to my m/sampan on s/board side. I came to police station to lodge this report. That's all.

The defendant made a report to the police at 10.16 am on the same day. His report was as follows:

> On 3 July 1981 at about 0600 hrs at sea off the end of Serangoon Rd whilst my craft no SF 9537 proceeding out of Serangoon river the other sampan was proceeding in the river. Suddenly the collision happened between my sampan and his, one of the man on other sampan was fall into the sea. I jumped in the river and save him, after that the man was sent to hospital due to injury of the forehead, I do not know the number of other sampan and the injury person's name, my sampan cause slight damage on s/board side. I came to police station just for report. That's all.

It is to be noted that both reports referred to the collision as sudden but neither stated where exactly on the river it occurred or how it occurred.

One Inspector Soh (PW2) investigated the accident. He testified that he visited the scene and instructed photographs to be taken of the boats. Unfortunately he did not take photographs of the river at the point where the accident occurred. The result was that material objective evidence concerning the directional course of the river was not before the court. Here I should interpose to say that Lek's testimony on this point was directly the opposite of the defendant's testimony as both of them had alleged that the river was flowing towards the right at the place where the collision occurred.

Inspector Soh also testified that at low tide there was sufficient space in the channel of the river for not more than three boats to pass one another at the same time. As he was referring to the types of boats similar to those involved in the accident, each of which was about four feet wide, the channel would be about 18-20 feet wide, taking into account any clearance space required. Lek's testimony supported this estimate of the width of the channel at low tide. He said it was about 12 to 15 feet and wide enough for four small boats to pass one another at the same time. He also said that the accident occurred when it was low tide. The defendant did not deny that the accident occurred at low tide but said that the channel was about 34 feet wide. He, however, admitted that the channel of the river was narrow at low tide. In these circumstances, I find as a fact that the navigable channel of the river was about 18 to 20 feet at low tide when the collision occurred and not 34 feet as claimed by the defendant.

Both Lek and the defendant also agreed that at low tide it was not safe for a boat to travel near either the bank of the river because of the shallow draught near the banks and also because of debris floating near the banks. According to Lek, the accident occurred at about 5 am but according to the defendant it was about 6 am. However, both agreed that it was dark and visibility was poor. The defendant claimed that there was a red light on the bow of his boat. In my view, this made no difference whatever to the physical conditions then prevailing.

The other unusual feature about this case is that SF9469 was damaged on its *starboard* side about two feet from the bow. The damage was on the top part of the boat where a small section of timber had been gouged out of the boat and a long piece of timber dislodged. This damage could only have been caused by the sharp bow of SF9537 ramming into SF9469 at an angle. Now, a collision between two boats on a channel of river of this width which caused the kind of damage to one of the boats as I have described could only have happened in any one of the following circumstances:

(1) SF9469 was travelling on its correct side of the river and SF9537 came from the opposite direction on its wrong side;
(2) SF9537 was travelling on its correct side of the river and SF9469 came from the wrong side;
(3) both the boats were travelling in the middle of the river and collided as both were turning at the bend of the river.

Not unexpectedly, the evidence of Lek was to the effect that the first scenario took place whilst the evidence of the defendant was that the second scenario took place. I have considered their evidence and I do not accept their oral accounts of how and where the collision occurred. In my view, neither Lek nor the defendant was aware of how it occurred. Lek could not see any oncoming traffic as he was facing the deceased who was steering the boat. As it was a dark night and visibility was poor, I also find that the defendant could not see what was coming round the bend of the river. In my view, the truth of the matter is found in both the reports which were made to the police on the day of the accident. The reports clearly show that neither Lek nor the defendant knew the location of the boats or where on the river the collision occurred. No doubt both of them must have heard the sound of engines but by the time the deceased and the defendant became aware of the presence of each other's boat bearing down on the other, it was either too late to take avoidance action or they took the wrong avoidance action.

So, I find that there is no evidence as to the respective positions of the two boats on the river immediately before or how they collided into each other or how one collided into the other.

In these circumstances, how should liability be determined? It is, of course, trite law that the plaintiff must prove that the defendant is negligent and that if he fails to do so, his claim must be dismissed. Counsel for the defendant has submitted that on the plaintiff's evidence such is the position here or alternatively, on the defendant's evidence, the deceased was the negligent party. Counsel for the plaintiff, on the other hand, has submitted that on Lek's evidence, the defendant was wholly to blame, but that if the court is in doubt as to which version is the more probable one, both parties ought to share the blame. Counsel referred me to three road traffic cases which have, he submits, established the principle put forward by him. These cases are: *Baker* v *Market Harborough Industrial Co-Operative Society*,[1] *W & M Wood (Haulage) Ltd* v *Redpath*[2] and *Davidson* v *Leggett*.[3]

Of course, the mere collision between two motor vehicles does not mean that there is no longer any burden on the party who seeks to blame the other to prove his case: see Megaw LJ in *Knight* v *Fellick*[4] at p 325. In each of the three cases cited by counsel for the plaintiff the collision had taken place on or near the centre of the road and there was no other evidence on which the court could say who was to blame. The principle is stated correctly in the headnote to the report of *Baker's* case[1] which reads as follows:

> Where the evidence established that a collision between two motor vehicles proceeding in opposite directions occurred in the centre of a straight road during the hours of darkness, when both drivers were killed, the inference, in the absence of any other evidence enabling the court to draw a distinction between them, was that each driver was committing almost the same acts of negligence – failing to keep a proper lookout and to drive his vehicle on the correct side of the road – and accordingly both were equally to blame.

In *Howard* v *Bemrose*[5] at p 38, Buckley LJ summarized the principle as follows:

> The principle of (*Baker's* case) is that when, after all available evidence has been heard, it is clear that on the balance of probabilities there has been negligence on the part of somebody but when, on that evidence, and again on the balance of probabilities, the court is unable to say whether the negligence is that of one party or the other, or of both parties, then it is open to the court – once again on the balance of probabilities to say that the negligence was the negligence of both parties, and then, being without further information enabling the court to apportion the blame, the court will conclude that the parties contributed equally to the accident.

In the present case, I am left in doubt as to where on the river the two boats collided. Given that both the deceased and the defendant were experienced boatmen with some knowledge of the physical conditions of the Serangoon river, I do not think that I can safely postulate scenario one or scenario two as having occurred as that would, in the absence of direct evidence, imply that one of them was grossly negligent. I think that scenario three is more probable taking into account the fact that the collision occurred at about 5 to 6 am when it was still dark and when there would be little traffic on the river and it was not safe to travel near the banks. In such conditions the natural inclination would be for the deceased or the defendant to keep to the centre of a narrow channel. Accordingly, I find that the principle in *Baker's* case[1] applies in this case.

Even if my finding that the two boats were probably travelling in the centre of the river when they collided were wrong, my finding on liability would be the same on another ground. It should be recalled that the damage to SF9469 was inflicted on its starboard side. This means, in the absence of any other evidence, that both boats were travelling on their wrong sides. As there is no such other evidence, both must be held to blame, and since I am unable to determine the degree of blameworthiness of each of them, both are equally to blame.

The defendant has, in this case, failed to plead contributory negligence in his defence. His counsel has, at the conclusion of this case, applied to amend the defence to include a plea of contributory negligence. Counsel for the plaintiff has objected to the application, but not too strongly. As I believe that the omission to plead contributory negligence on the part of counsel for the defendant was due to inadvertence rather than confidence, I allow his application.

In the result, there will be judgment for the plaintiff for damages in the sums of $25,250 being half of the agreed quantum and half of the agreed funeral expenses with interest at 3% pa on $17,600 from 20 January 1984 to date hereof and 6% on $1,250 from 20 January 1984 up to today and costs to be taxed on the High Court scale.

Order accordingly.

Solicitors: *Murphy & Dunbar*; *Sidhu & Sidhu.*

Reported by *Ng Sheau Jiuan*